

## **EXHIBIT D**

JONATHAN ROSEN  
COLUMBIA CASUALTY vs. NEIGHBORHOOD RISK

December 01, 2014

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<p>1 2 UNITED STATES DISTRICT COURT 3 FOR THE SOUTHERN DISTRICT OF NEW YORK 4 -----x 14 Civ. 0048 (AJN) 5 COLUMBIA CASUALTY COMPANY, 6 Plaintiff, 7 8 -against- 9 10 NEIGHBORHOOD RISK MANAGEMENT CORPORATION, 11 Defendant. 12 -----x 13 DEPOSITION OF JONATHAN ROSEN 14 New York, New York 15 Monday, December 1, 2014 16 17 18 19 20 21 Reported by: 22 TOBA ALIZA KATZ 23 24 25</p>	<p>1 2 A P P E A R A N C E S : 3 4 COLLIAU, CARLUCCIO, KEENER, MORROW, PETERSON 5 &amp; PARSONS 6 Attorneys for Plaintiff 7 333 South Wabash Avenue 8 Chicago, Illinois 60604 9 BY: LISA A. WILSON, ESQ. 10 11 DORNBUSH, SCHAEFFER, STRONGIN &amp; VENAGLIA, LLP 12 Attorneys for the Defendant 13 747 Third Avenue 14 New York, New York 10017 15 BY: WILLIAM F. COSTIGAN, ESQ. (Of counsel) 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 2 December 1, 2014 3 2:00 p.m. 4 5 Deposition of JONATHAN ROSEN held 6 at COLLIAU, CARLUCCIO, KEENER, MORROW, 7 PETERSON &amp; PARSONS, New York, before 8 TOBA ALIZA KATZ, a Stenotype Reporter 9 and Notary Public of the State of New 10 York. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 IT IS HEREBY STIPULATED AND AGREED, 3 by and between counsel for the respective 4 parties hereto, that the filing, sealing and 5 certification of the within deposition shall 6 be and the same are hereby waived; 7 8 IT IS FURTHER STIPULATED AND AGREED 9 that all objections, except as to the form 10 of the question, shall be reserved to the time 11 of the trial; 12 13 IT IS FURTHER STIPULATED AND AGREED 14 that the within deposition may be signed 15 before any Notary Public with the same force 16 and effect as if signed and sworn to before 17 the Court. 18 19 20 21 22 23 24 25</p>

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<p style="text-align: right;">Page 41</p> <p>1 J. Rosen</p> <p>2 can parse out parts of a contract; I</p> <p>3 think you are going to look at the</p> <p>4 entirety of it.</p> <p>5 MR. COSTIGAN: What's at issue is</p> <p>6 the formula, and your question --</p> <p>7 MS. WILSON: Bill, I'm going to</p> <p>8 call Judge Pitman if you keep with the</p> <p>9 speaking objections.</p> <p>10 MR. COSTIGAN: Go right ahead.</p> <p>11 THE WITNESS: Let's keep going.</p> <p>12 MR. COSTIGAN: There's an</p> <p>13 objection to that question.</p> <p>14 Q. In reviewing the SIR endorsement</p> <p>15 and the buyout endorsement, did you make</p> <p>16 any attempt to harmonize the two</p> <p>17 endorsements?</p> <p>18 A. I don't know what you mean by</p> <p>19 "harmonize." You have an SIR endorsement</p> <p>20 that sets forth the obligations of the</p> <p>21 insured in relation to its SIR obligations.</p> <p>22 You then have an SIR buyout endorsement and</p> <p>23 its successor, I guess, which provide a</p> <p>24 mechanism to allow the insured to</p> <p>25 essentially buy out or escape from any</p>	<p style="text-align: right;">Page 43</p> <p>1 J. Rosen</p> <p>2 of my head, but certainly the SIR is an SIR</p> <p>3 in relation to paid, it's what the</p> <p>4 insured's retention is in relation to</p> <p>5 paid, both indemnity and defense. That's</p> <p>6 how it gets **.</p> <p>7 Q. Do you know what insurance</p> <p>8 reserves are?</p> <p>9 A. Yes.</p> <p>10 Q. Can you tell me your</p> <p>11 understanding of what a reserve is?</p> <p>12 A. A reserve is an amount that is</p> <p>13 described by an insurance company as its</p> <p>14 potential obligation in relation to an</p> <p>15 existing claim that is known but has not</p> <p>16 yet been satisfied.</p> <p>17 Q. In the insurance industry,</p> <p>18 reserves are treated as liabilities; aren't</p> <p>19 they?</p> <p>20 A. They are treated as liabilities,</p> <p>21 yes.</p> <p>22 Q. They are in fact known</p> <p>23 liabilities; are they not?</p> <p>24 A. They are an estimate of known</p> <p>25 liabilities.</p>
<p style="text-align: right;">Page 42</p> <p>1 J. Rosen</p> <p>2 further obligation towards an SIR</p> <p>3 obligation, so I don't really know what you</p> <p>4 mean by "harmonize." One imposes an</p> <p>5 obligation, the other one facilitates a</p> <p>6 buyout of that obligation.</p> <p>7 Q. Would you agree that the</p> <p>8 self-insured retention endorsement governs</p> <p>9 the insured's responsibility to pay for</p> <p>10 losses prior to the buyout date?</p> <p>11 A. Yes.</p> <p>12 Q. Do you understand that those</p> <p>13 losses would include both paid and reserve</p> <p>14 losses?</p> <p>15 A. No. I think the obligation of</p> <p>16 the insured is to satisfy its self-insured</p> <p>17 retention in relation to payments.</p> <p>18 Q. What part of the endorsement</p> <p>19 leads you to that conclusion?</p> <p>20 A. I don't have the endorsement in</p> <p>21 front of me, so you can't ask me that</p> <p>22 question in a vacuum. If you want to show</p> <p>23 it to me, I'd be happy to look at it.</p> <p>24 Q. I don't have it, actually.</p> <p>25 A. I can't remember it off the top</p>	<p style="text-align: right;">Page 44</p> <p>1 J. Rosen</p> <p>2 Q. Under New York law, insurance</p> <p>3 companies are required to identify their</p> <p>4 reserves as liabilities on their balance</p> <p>5 sheets; is that right?</p> <p>6 A. I think I've already agreed to</p> <p>7 that proposition. It was your last</p> <p>8 statement that I didn't exactly agree with.</p> <p>9 Q. What part did you not agree with?</p> <p>10 A. That it's a known liability and</p> <p>11 implicit in that is that it's an exact</p> <p>12 liability. It's not an exact liability;</p> <p>13 it's a reserve for potential liability, and</p> <p>14 you can resolve that liability within that</p> <p>15 reserve, for that reserve, or about that</p> <p>16 reserve.</p> <p>17 Q. Do you know what an allocated</p> <p>18 claim cost is?</p> <p>19 A. Yes, I believe I do.</p> <p>20 Q. What is an allocated claim cost?</p> <p>21 A. It's a cost associated or</p> <p>22 allocated to a particular claim. It could</p> <p>23 be on a paid or a reserve basis.</p> <p>24 Q. It could be on a paid or a</p> <p>25 reserve basis?</p>

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1 J. Rosen  
2 A. Correct.  
3 Q. So a reserve could be an  
4 allocated claim cost; is that right?  
5 A. Yes.  
6 Q. I want to go back to the  
7 materials relied upon in Exhibit B. I  
8 think you mentioned before that you believe  
9 you reviewed the SIR endorsement although  
10 it is not listed here. Is there any other  
11 document or material that you reviewed  
12 that's not identified on this list?  
13 A. Not that comes to mind.  
14 Q. I asked you initially whether you  
15 could have rendered your opinions without  
16 reviewing any of these materials, and you  
17 had said there was some value in the e-mail  
18 chain that's material number 2. I don't  
19 want to misconstrue what you said, but I  
20 think that's what you said; is that right?  
21 A. I agree.  
22 Q. Obviously the buyout terms you  
23 need to review too. Is there anything else  
24 on this list that you felt or feel that  
25 there was value in reviewing and rendering

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1 J. Rosen  
2 your opinion?  
3 A. Yes, well, the actual reserve  
4 numbers that I utilized for purposes of the  
5 additional premium calculation that's in my  
6 report were derived from the first amended  
7 complaint, so that was useful.  
8 Q. With the exception of the policy,  
9 the parts of the policy that are excerpted  
10 here, which is number 3,4,5 and the SIR  
11 endorsement, which is not identified, so  
12 the remaining materials -- I'm sorry, and  
13 the common policy conditions, anything  
14 policy-related. To render your opinion  
15 that the endorsement is clear and  
16 unambiguous, did you need to rely on the  
17 remaining exhibits, i.e., the exhibits that  
18 are not the policy?  
19 A. The answer is no.  
20 Q. I don't mean to be flippant, but  
21 if you don't need to look at extrinsic  
22 material to provide an opinion that the  
23 policy is clear and unambiguous, why is  
24 your testimony needed to render that  
25 conclusion? Shouldn't we just be looking

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1 J. Rosen  
2 at the terms of the policy itself then?  
3 MR. COSTIGAN: I object, that's  
4 beyond the scope of this deposition.  
5 A. I think that when one gives an  
6 insurance or reinsurance practitioner a  
7 policy to look at, they are not looking at  
8 it as an uneducated person. In other  
9 words, they are looking at it based on the  
10 knowledge that they have of the industry  
11 and how the industry operates, so when I  
12 looked at the formula, for example, and I  
13 looked at the clear and unambiguous  
14 language of the formula, I think that it's  
15 helpful to have an industry person look at  
16 the formula and see whether it makes sense  
17 from a buyout perspective for those terms  
18 to be incorporated. And when I saw -- so I  
19 think that it's helpful to look at those  
20 terms and get an appreciation of the  
21 application of those terms and why those  
22 terms make sense within the context of the  
23 contract that you're looking at.  
24 Q. I'm going to try to re-piece  
25 together what you said. I think you said

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1 J. Rosen  
2 it is helpful to have an industry person  
3 make sense of the terms of the endorsement  
4 from a buyout perspective. If you don't  
5 mind, let me just re-ask the question since  
6 this is such a -- apparently an issue.  
7 If the terms of the policy are  
8 clear and unambiguous, why do we need your  
9 expert testimony to interpret them?  
10 A. Because there are certain terms  
11 of art and it may be helpful to have a  
12 practitioner review and look at those terms  
13 of art and determine their meaning.  
14 Q. What terms of art are you  
15 providing that testimony regarding?  
16 A. Well, you have a formula, and  
17 your formula includes within its ambit paid  
18 losses and expenses and case reserve losses  
19 and expenses, and a factor is applied to  
20 those. So from a practitioner perspective,  
21 you look at that and say, "Does that make  
22 sense from a term of art perspective to  
23 determine the value of the outstanding --  
24 of the outstandings," if you will.  
25 Q. You had mentioned before that the